

Federal Communications Commission
Washington, D.C. 20554

In Reply Refer To:
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March 12, 2001

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In re: KBKO(AM), Santa Barbara, CA, Fac. ID 61712
KSPE-FM, Ellwood, California, Fac. ID 61058
File Nos. BAL/BALH-19981028EE-EF
Assignment of Licenses

Dear Counsel:

The staff has under consideration: (1) the above captioned applications proposing to assign the licenses of stations KBKO(AM), Santa Barbara, California, and KSPE-FM, Ellwood, California, from Spectacular Broadcasting, Inc. ("Spectacular") to Citicasters Co. ("Citicasters"); (2) U.S. Department of Justice ("DoJ") Comment filed in Response to a November 25, 1998 Commission Public Notice ("*Public Notice*") regarding the applications ("*DoJ Comment*"); (3) a Petition to Deny the Applications filed by Pacific Coast Communications, L.L.C. ("Pacific Coast")¹; (4) comments from the parties in response to the Public Notice; (5) a January 11, 2001 Motion by DoJ to Withdraw the DoJ Comment ("*DoJ Withdrawal*"); and (5) additional

¹ At the time the Petition to Deny was filed, Pacific Coast was the licensee of station KRUZ(FM), Santa Barbara.

responsive pleadings.² For the reasons set forth below, the Petition to Deny is dismissed as moot and the applications are granted.

Background. Citicasters is a wholly-owned indirect subsidiary of Clear Channel Communications, Inc.,³ and is currently the licensee of four stations licensed to Santa Barbara, two stations licensed to Santa Maria, two stations licensed to small communities near Santa Barbara, and three stations licensed to Los Angeles.⁴ Citicasters is operating the two stations it here proposes to acquire pursuant to a local marketing agreement, and its proposed acquisition of these stations is consistent with the numerical limits in our radio local ownership rules, 47 C.F.R. §73.3555.⁵ However, the Commission “flagged” the Public Notice announcing receipt of the applications on the grounds that the proposed transaction might raise concerns about competition and diversity.⁶

² These documents include: Citicasters’ April 16, 1999 Response to Petition to Deny and Comment in Response to Public Notice (“*Citicasters’ Response*”); and Pacific Coast’s May 4, 1999 Reply to Citicasters’ Response to Petition to Deny and Comment in Response to Public Notice.

³ At the time the instant applications were filed, Citicasters was a wholly owned subsidiary of Jacor Communications, Inc. (“Jacor”). On April 29, 1999, the Mass Media Bureau approved the transfer of Jacor’s stock from its shareholders to Clear Channel Communications, Inc. See, *Shareholders of Jacor Communications, Inc.* 14 FCC Rcd 6867 (MMB 1999) (“*Jacor Communications*”).

⁴ The stations are: KIST-FM, KTMS(AM), KIST(AM), and KTYD(FM), Santa Barbara, CA; KSNI-FM and KXFM(FM), Santa Maria; KACD(AM), Thousand Oaks, CA; KSBL(FM), Carpinteria, CA; and KFI(AM), KIIS-FM and KXTA(AM), Los Angeles, CA. There is no principal community contour overlap between KIIS-FM and KXTA(AM) and KBKO(AM) and KSPE-FM; therefore, they are not relevant to any determination concerning Citicasters’ compliance with the Commission’s multiple ownership rules. See n.5, *infra*.

⁵ Citicasters’ multiple ownership showing indicates that, using the Commission’s current definition of “radio market,” there are 5 separate radio markets created by the transaction. Market 1 consists of 48 stations, and Citicasters would own 3 of the stations (3 FM); Market 2 consists of 38 radio stations, and Citicasters would own 3 of the stations (3 FM); Market 3 consists of 37 radio stations, and Citicasters would own 7 of the stations (3 AM 4 FM); Market 4 consists of 71 radio stations, and Citicasters would own 4 of the stations (3 AM 1 FM); and, Market 5 consists of 71 stations, and Citicasters would own 3 of the stations (3 AM). See *Notice of Proposed Rule Making, In the Matter of Definition of Radio Markets*, MM Docket No. 00-244, FCC 00-427 (December 13, 2000). A single licensee may therefore own up to 8 stations in Markets 1, 4, and 5 (not more than 5 of which are in the same service), and 7 stations in Markets 2 and 3 (with no more than 4 stations in the same service). See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), §202(b)(1) codified as 47 C.F.R. §73.3555(a)(1). As demonstrated, Citicasters’ proposed ownership of KBKO(AM) and KSPE-FM complies with the total radio and same service restrictions for each identified radio market.

⁶ Public Notice, Report No. 24375 (November 25, 1998). In public notices announcing the filing of radio broadcast sales applications, the Commission currently identifies for further competitive review (“flags”) those applications that would result in one entity controlling 50% or more of the advertising revenues in the relevant market or two entities controlling 70% or more of the advertising revenues in that market. See *Shareholders of AMFM, Inc.*, 15 FCC Rcd 16062, 16070 (2000) (“*AMFM, Inc.*”). The language used in such public notices is: “Based on our initial analysis of this application and other publicly available information, including advertising revenue share data from the BIA database, the Commission intends to conduct additional analysis of the ownership concentration in the relevant market. This analysis is undertaken pursuant to the Commission’s obligation under Section 310(d) of the

In response to the Public Notice, Pacific Coast filed a Petition to Deny the assignment applications, alleging anti-competitive effects on local advertisers and decreased outlet, service and viewpoint diversity in the Santa Barbara market. Specifically, Pacific Coast stated that, after the proposed transaction, Citicasters would control an estimated 56.86% of the local advertising revenue in the Arbitron-defined metro market for Santa Barbara.⁷ Our independent analysis indicates that Citicasters would control 51.6% of the advertising revenue in the Santa Barbara market if the proposed assignment is approved.

The Department of Justice opened an investigation into the proposed transaction and filed a Comment in this proceeding because it was “concerned about potential competitive problems that might arise from the proposed acquisition in the Santa Barbara, California, radio market.”⁸ However, after Citicasters complied with DoJ’s “extensive request for documents and information,”⁹ the Department withdrew its Comment.¹⁰

Discussion. We note initially that on January 6, 2000, Pacific Coast filed an application to assign KRUZ(FM), the only Santa Barbara station licensed to it, to Cumulus Licensing Corp. (“Cumulus”).¹¹ The Commission approved that assignment and it was consummated on April 12, 2000.¹² Because Pacific Coast is no longer the licensee of KRUZ(FM), the petition to deny is dismissed as moot. *See Friends of the Earth vs. Laidlaw Environmental Svcs. (TOC), Inc.*, 120 S.Ct. 693 (2000). Nonetheless, we have examined the arguments Pacific Coast raised concerning the potential competitive impact of the proposed assignment to ensure that approval would be consistent with the public interest. *See* 47 U.S.C. §309(d); *Stockholders of CBS, Inc.*, 11 FCC Rcd 3733, 3741 (1995), *citing*, *Booth American Co.*, 58 FCC 2d 553, 554 (1976).

Communications Act, 47 U.S.C. Section 310(d), to grant an application to transfer or assign a broadcast license or permit only if so doing served the public interest, convenience and necessity. We request that anyone interested in filing a response to this notice specifically address the issue of concentration and its effect on competition and diversity in the broadcast markets at issue and serve the response on the parties.”

⁷ See Petition to Deny at 3. Pacific Coast’s revenue percentages are based on a December 28, 1998 Affidavit of Howard Grafman, a principal in Pacific Coast, which is included in the Petition to Deny as Appendix 1.

⁸ See *DoJ Withdrawal*.

⁹ See *Citicasters’ Response* at 3.

¹⁰ *DoJ Withdrawal* at 2.

¹¹ See File No. 20000106AAA.

¹² By separate action today, the Mass Media Bureau is granting an application assigning the licenses for KKSBB(FM), Goleta, California, and KMGQ(FM), Santa Barbara, California, from Engels Enterprises, Inc. to Cumulus. (File Nos. BALH-20000808ABU-ABV). Our decision in the instant case takes into consideration our action in granting those applications.

The 51.6% share of advertising revenue that Citicasters' stations will garner, while not insignificant, is consistent with levels previously approved in other Commission cases. *See NewCity Communications, Inc.*, 12 FCC Rcd 3929 (1997) (approving transaction that would result in proposed assignee controlling 52.4% of radio advertising revenues in the market). Further, the combined advertising revenue of Citicasters and Cumulus, which, upon consummation of the assignment of KKSBB(FM) and KMGQ(FM)¹³ will have the next highest radio revenue in the market, does not, at 81.6%, pose disqualifying market concentration concerns under our existing cases. *See AMFM, Inc.*, 15 FCC Rcd at 16070 (approving transactions in Akron, Ohio and Cedar Rapids, Iowa, where the post-merger advertising share of the top two groups in the market would be 82.6% and 80.8%, respectively). We also find relevant that, in addition to Citicasters, there will remain five independent station licensees, who own an additional seven stations in the market. Finally, we find relevant and probative in approving this assignment, DoJ's decision, after "obtain[ing] additional information" regarding the transaction and after "further evaluation," to withdraw its Comment.¹⁴

Based upon the foregoing, we find no substantial and material question of fact as to the effect of the proposed transaction on competition and diversity that would warrant further inquiry. In addition, we have reviewed the above-captioned applications and find that Citicasters is fully qualified and that grant of the applications is consistent with the public interest.

Accordingly, IT IS ORDERED, That, the Motion to Withdraw the U.S. Department of Justice Comment is HEREBY GRANTED, and the Comment filed by the U.S. Department of Justice IS DISMISSED, the petition to deny filed by Pacific Coast Communications, L.L.C., IS DISMISSED; and the applications to assign the licenses for stations KBKO(AM), Santa Barbara, California, and KSPE-FM, Ellwood, California, from Spectacular Broadcasting, Inc. to Citicasters Co. (File Nos. BAL/BALH-19981028EE-EF) ARE GRANTED.

Sincerely,

Linda Blair
Chief, Audio Services Division
Mass Media Bureau

¹³ See n.12, *supra*.

¹⁴ *DoJ Withdrawal*.